

MINUTES

The State Board of Elections Board Meeting was held on Monday, November 28, 2011. The meeting was held in the General Assembly Building, Room C, E. 910 Broad Street, Richmond, Virginia. In attendance, representing the State Board of Elections (SBE) was Charles Judd, Chair; Kimberly Bowers, Vice-Chair; Donald Palmer, Secretary; Joshua Lief, Senior Assistant Attorney General and SBE Counsel; and Justin Riemer, Deputy Secretary. Chairman Judd called the meeting to order at 10:00AM.

The first order of business was the approval of minutes from the State Board of Election Board Meetings held on October 18, 2011 and November 8, 2011. After careful review of the Minutes Vice-Chair Bowers noted changes to the minutes. Chairman Judd moved to accept the suggested changes and the Board unanimously approved the revised minutes.

The second order of business was the Secretary's Report delivered by Secretary Palmer. The Secretary's Report is an agenda item for each Board Meeting describing recent developments at SBE. Secretary Palmer reported that SBE received full funding for the Federal Voting Assistance Program grant. Secretary Palmer noted that the grant total of 1.8 million dollars would improve the ability to process ballots to the military and overseas absentee voters. Secretary Palmer noted that this is a result of collaborating with Microsoft & Democracy Live. Secretary Palmer noted that the grant monies would also allow SBE to partner with Open Source Digital Voting Foundation to build a new citizen portal to enable citizens to complete registration and absentee forms via the internet. Secretary Palmer noted that there would also be a partnership with Scytl to research various voting assistance technology and secure electronic ballot returns. This pilot project would target voters in the Wounded Warriors Program. Secretary Palmer noted that program goals would be achieved if these systems were in place prior to the Presidential Primary. Secretary Palmer introduced David Blackwood, SBE Policy Analyst, addition to the SBE team. Secretary Palmer discussed the recent reports on the Virginia State Budget. Secretary Palmer conveyed that SBE would not be excluded from the overall state budget cuts that are pending and SBE Staff had to propose 2%, 4%, and 6% budget reductions. Secretary Palmer noted that they would be targeting the cost

32 associated with paper ballots and mailings and would task technology to perform those
33 functions. Secretary Palmer noted that SBE would try to reduce costs by holding
34 personnel positions open and bring services provided by outside sources inside when
35 lower costs are apparent. Secretary Palmer notes that over the last five years SBE's
36 budget has been cut by more than fifty percent. Secretary Palmer states that some of the
37 reductions have been passed down to the localities and that SBE was tasked with cutting
38 four hundred and eighty two thousand dollars for the current budget. Secretary Palmer
39 thanked the Board Members for being actively present on Election Day, November 2011.
40 Chairman Judd commented that Election Day was without incident which reflects the
41 quality of the individuals who are working within the election community. Chairman
42 Judd also welcomed David Blackwood to the SBE team. Chairman Judd expressed
43 concern that the SBE budget continues to be reduced especially with the mandates from
44 the federal government on how to conduct elections. Chairman Judd expressed his
45 gratitude to Secretary Palmer and the SBE staff for pursuing the grant. Secretary Palmer
46 commented that there are federal activities such as the Help America Vote Act, HAVA,
47 that generate funds with specific federal requirements. Secretary Palmer noted that when
48 the federal funds are depleted that the mandates will be still be required.

49 The third order of business was the presentation of the resolution honoring the life
50 and work of Pat Harrington, General Registrar of Virginia Beach, who passed away on
51 September 30, 2011. Chairman Judd invited the attending representatives of the
52 Harrington family to the podium for the presentation. Vice-Chair Bowers recited the
53 resolution to the family, the attending audience and presented the resolution to Frank
54 Harrington, Pat Harrington's surviving spouse.

55 The next order of business was to Ascertain the Results of the November 8, 2011
56 General Election pursuant to § 24.2-534 of the Code of Virginia. Matt Abell, Assistant
57 Manager of Election Services, explained the certification process to the Board and SBE
58 staff members. Chairman Judd stated that comments would be taken after the certification
59 process was complete. Terry Ellen Carter, Montgomery County Voter, approached the
60 podium and requested that the election results in Districts A, D, F, and G in Montgomery
61 County be considered void. Ms. Carter expressed that her requests be validated on the
62 basis that it is unknown how many Montgomery County voters received the wrong ballot.

Chairman Judd inquired if there was sufficient evidence to withhold certification of the results in the House of Delegates, District 12 and Senate District 21. Joshua Lief, Senior Assistant Attorney General and SBE Counsel, informed SBE Board Members that if a candidate felt that there were improper handling of the election process that the candidate should have taken this matter into court. Joshua Lief noted that it is the responsibility of the candidate to bring complaints to the attention of the State Board of Elections. Joshua Lief added that Montgomery County is under censure from the SBE and that on Election Day the problem identified and quickly resolved. Chairman Judd, Vice-Chair Bowers, Secretary Palmer, Chris Piper, Matt Abell, and Rose Mansfield partnered to complete the certification of candidates in the November 8, 2011 General Elections. Chairman Judd, Vice-Chair Bowers, and Secretary Palmer concluded the process by signing the Certificates of Election and Chairman Judd declared that the results of the November 8, 2011 and General Election were certified.

The next order of business was the requests for Temporary Full-Time Status for the General Registrars in Surry and Mathews Counties and for the City of Covington. Deputy Riemer informed Board Members that the Electoral Boards have submitted the required requests that are authorized under Chapter 890, 2011 Acts of Assembly Item 80(C). Deputy Riemer noted that these acts authorize the State Board of Elections to approve Temporary Full-Time status to General Registrars who, because of the size of the locality's population, are only funded to work on a part-time status. Deputy Riemer asked the Board Members approve these submitted requests, with one small modification. Deputy Riemer noted the exception of Surry County request for full-time status through July 31, 2012 which should be modified for full-time status through June 30, 2012. Chairman Judd move that the Board approve the requests: from the Electoral Board of Mathews County for funding for the General Registrar for temporary full-time status for the months of February and March of 2012, for the City of Covington for the months of January through May 2012, and for Surry County for the period of January 2, 2012 through June 30, 2012. Vice-Chair Bowers seconded the motion and the Board unanimously approved the motion. Chairman Judd asked if there were any comments and Robin Lind, General Electoral Board Association, offered his support of this approved motion.

94 The next order of business was the proposed revision to the Virginia Voter
95 Registration Application Form. Jennifer Thomas, SBE Director of Training, explained
96 that the Virginia Voter Registration Application Form especially Section 203 relating to
97 Fairfax County and Virginia Code § 24.2-105 and § 24.2 -518. Ms. Thomas explained
98 that the proposed changes included adding an explanation and disclaimer to page 1,
99 second paragraph of the Virginia Voter Registration Application Form. Ms. Thomas
100 expressed that additional changes included adding a box “Check if you need assistance in
101 Spanish” on page 3 and rewording the “Check if you have a disability that requires
102 someone to assist you in order to vote” and deleting the line where a voter describes such
103 disability on that same page. Chairman Judd asked if there were any questions and Vice-
104 Chair Bowers inquired about the location of the changes in section 6. Ms. Thomas
105 directed Vice-Chair Bowers to the print at the bottom of page 3. Joshua Leif, SBE
106 Counsel, noted the proposed change relating to the disability was a positive change and
107 suggested that this changed be incorporated into the Absentee Ballot upon its’ next
108 revision. Chairman Judd asked if there were any questions or comments from the
109 audience relating to the proposed changes and with there being none Chairman Judd
110 sought a motion to accept the proposed changes to the Virginia Voter Registration
111 Application Form. Vice-Chair Bowers moved to accept the changes to the Virginia Voter
112 Registration Form and Secretary Palmer seconded the motion and the Board unanimously
113 approved the motion.

114 The next order of business was the complaint by Don Assaid and Mark Tyson
115 against State Board of Elections and Botetourt County General Registrar Phyllis Booze.
116 Chairman Judd asked if there was any member of the audience that would like to address
117 the Board and Mark Tyson, Virginia voter and supporter of Don Assaid, expressed
118 gratitude for the time allowed to address the Board. Mr. Tyson stated that he felt that the
119 State Board of Elections has failed in it’s charter during this election cycle citing Virginia
120 Code § 24.2-103. Mr. Tyson expressed that he believes that the Board failed Mr. Don
121 Assaid, candidate for supervisor in Valley District, Botetourt County. Mr. Tyson
122 expressed that he believed that SBE failed to provide accurate voter status information.
123 Mr. Tyson expressed those Virginia Code § 24.2-504 states that persons are entitled to
124 have their name printed on the ballot as independent candidates and he believes that Don

125 Assaid fulfilled all of those requirements and was denied access to the ballot. Mr. Tyson
126 expressed that the State Board of Elections had failed to respond to all inquiries and pleas
127 for assistance and ignored the problem. Chairman Judd asked Mr. Tyson to detail what he
128 was seeking from the State Board of Elections while the Board was in session on this
129 date. Mr. Tyson stated that he would like some of the problems to be addressed and be
130 corrected so that future elections do not have the same problems. Secretary Palmer
131 addressed Mr. Tyson with the question: "How many members of the SBE staff had he
132 communicated with about this issue?" Mr. Tyson stated that he had talked with Deputy
133 Riemer, Martha Brissette, Andrea Keeles, and Rose Mansfield. Mr. Tyson further stated
134 that, although he had spoken with these SBE staff members, there has yet to be a
135 response. Chairman Judd reemphasized that the responses Mr. Tyson and Mr. Assaid
136 received from SBE Staff Members are indications that the issues presented were not
137 ignored. Mr. Tyson stated that the Assaid voter petitions were based on of the data
138 presented in the VERIS system on the morning of August 23, 2011. Secretary Palmer
139 informed Mr. Tyson that Botetourt County was complete in the redistricting process on
140 August 17, 2011. Secretary Palmer informed Mr. Tyson that there is supporting
141 documentation supporting the completion of redistricting in Botetourt County. Mr. Tyson
142 asked when the disclaimer was added. Secretary Palmer noted that the disclaimer was
143 added at the request of Don Assaid. Secretary Palmer noted that Don Assaid was the only
144 independent candidate who had any issue getting on the ballot utilizing the SBE process.
145 Mr. Tyson stated that the registrar's office approved Mr. Assaid's petition submissions
146 and the circulator of the petitions as a qualified voter. Secretary Palmer informed Mr.
147 Tyson that he has challenged the State Board of Elections to perform a duty that is not
148 within their power and it is the local General Registrar and Electoral Board duties to
149 place a candidate on the ballot. Mr. Assaid states that the General Registrar altered the
150 petitions with "Wite Out" and that they have brought this to SBE attention and it has been
151 ignored. Secretary Palmer assured Mr. Tyson that SBE is not a part of a conspiracy and
152 that SBE did complete redistricting on August 17, 2011. Secretary Palmer added that
153 each locality within the Commonwealth has completed redistricting in a timely manner
154 and on schedule. Secretary Palmer noted that there is an investigation into this matter and
155 offered to provide the documentary evidence. Joshua Lief, SBE Counsel, stated to Mr.

156 Tyson that he is welcome to his opinion but to state that the situation was ignored is
157 inaccurate. Mr. Lief further explained that the situation was looked into at great detail.
158 Mr. Don Assaid approached the Board and stated that “This is a formal complaint of
159 election tampering and election fraud”. Mr. Assaid stated that the General Registrar
160 approved Doug Gimbert, my circulator, as a qualified circulator and a qualified voter on
161 August 23, 2011. Mr. Assaid stated “she then, very suspiciously, went back and used
162 “Wite Out” on the original documents and those documents were altered which is clearly
163 an illegal act”. Mr. Assaid stated that “somebody went to the Electoral Board, which we
164 believe was the Republican Committee Chair, and then went to the General Registrar and
165 approved me as a candidate and qualified as a candidate and then it was released to the
166 press”. Mr. Assaid stated that over the next two days the local Committee Chair went to
167 them and stated that this could not stand and the General Registrar took a registration
168 form from Mr. Gimbert. Mr. Assaid then stated that he took the minutes from the
169 Electoral Board mass meeting. Mr. Assaid then stated that Mr. Gimbert then went to
170 register and he was told by “Suzy Somebody” that he was in the Valley District and that
171 he saw the computer screen showing him, Mr. Gimbert, in the Valley District. Mr. Assaid
172 stated that he asked the General Registrar if they had looked at the other candidates’
173 petitions from two years ago and presented Board Members of the petitions of a rival
174 stating that there were eight signatures added a week after the petition was notarized. Mr.
175 Assaid stated that this is clearly a case of fraud. Mr. Assaid stated that instead of
176 disqualifying the petitions they choose to falsify the document and launch an investigator
177 trying to put my circulator in prison. Mr. Assaid stated that this candidate personal and
178 corporate attorney is the Chairman of the Electoral Board and the Electoral Board
179 Secretary is his Treasurer. Mr. Assaid asked SBE Board Members to censure the General
180 Registrar and the Electoral Board and turn this matter over to the Attorney General for an
181 investigation for Election Tampering and Election Fraud. Secretary Palmer asked Joshua
182 Lief about the assertion of voter fraud and irregularities in this case and the proper place
183 for this to be handled would be in the Commonwealth Attorney’s Office. Joshua Leif
184 stated that this assumption was correct and that the local Commonwealth’s Attorney
185 would handle these allegations. Mr. Assaid stated that the local Commonwealth Attorney
186 was compromised and that he went to him on this matter and he was told that this was not

187 viable. Joshua Lief inquired of Mr. Assaid if he was referring to Mr. Joel Branscom and
188 Mr. Assaid stated that this was correct. Mr. Assaid stated that Mr. Branscom is
189 compromised in this matter which is why we are asking the Attorney General to
190 investigate this matter. Secretary Palmer stated that he understood that there is an
191 investigation into this matter. Mr. Assaid reputed this stating that the investigation was to
192 see if they could charge Doug Gimbert into falsifying a signed affidavit. Joshua Lief
193 commented that since Mr. Assaid was aware of that fact was he also aware of the names
194 of the individuals conducting this investigation. Mr. Assaid stated that he knew the name
195 of the investigator to be Dick Trodden and that he was meeting with Mr. Trodden
196 tomorrow. Mr. Lief advised Mr. Assaid that he should speak to Mr. Trodden about this
197 matter. Mr. Assaid stated that Mr. Trodden had informed him that this was not the scope
198 of his investigation. Chairman Judd asked counsel to give the code that would support
199 given the SBE Board the power to conduct the investigation. Mr. Lief stated that under
200 Virginia Code § 24.2 –104 this Board could make a request to open an investigation into
201 this matter. Mr. Lief inquired of Mr. Assaid if a lawsuit had been filed. Mr. Assaid stated
202 that they were going to file and then decided to withdraw the lawsuit. Mr. Assaid further
203 explained that he and Mr. Tyson drove to Richmond, SBE, on October 31, 2011, without
204 an appointment. Mr. Assaid stated that understood that meetings were occurring and they
205 informed Rose Mansfield that they would be available all day. Mr. Lief then asked for a
206 clarification that Mr. Assaid Attorney was Mr. Williams. Mr. Assaid stated that was
207 correct. Secretary Palmer responded by stating that at least five members of the SBE staff
208 discussed this with individuals and Mr. Assaid and that Mr. Assaid's visit was
209 unannounced and without an appointment, while SBE was preparing for an election,
210 desiring to discuss issues that had been previously addressed. Secretary Palmer noted that
211 after Mr. Assaid was informed that there would not be an opportunity to meet on that date
212 that Mr. Assaid stayed in the building. Secretary Palmer informed Mr. Assaid that he
213 contacted Mr. Assaid's lawyer to inform him of the situation and that legal counsel
214 apologized for Mr. Assaid and stated that they was not aware of Mr. Assaid's visit. Mr.
215 Assaid thanked the Board Members for their time.

216 Chairman Judd then asked if there was any other business to come before the
217 Board. Mr. John Roger McCauley, resident of Christiansburg, informed the Board that he

218 had previously spoken previously to past SBE Board Members regarding an investigation
219 regarding the Montgomery County General Registrar's Office. Mr. McCauley expressed
220 that he believes that there is a serious non-performance issue with the General Registrar
221 in Montgomery County and would like this Board to follow the recommendations of
222 previous Boards to and send a team into the General Registrar's Office to investigate the
223 activities of the General Registrar. Chairman Judd stated that Mr. Lief, SBE Counsel, has
224 advised the Board Members on actions required. Chairman Judd stated that the current
225 SBE Board has issued a censor to the Montgomery County Electoral Board and to the
226 General Registrar. Chairman Judd asked what additional actions Mr. McCauley would
227 like initiated. Mr. McCauley stated that due to recent activity within the office of the
228 General Registrar of Montgomery County. Secretary Palmer expressed gratitude to Mr.
229 McCauley for taking an active part in the electoral process and for taking the time to
230 attend local and state meetings. Chairman Judd then asked if there was any other business
231 to come before the Board.

232 Terry Ellen Carter, Montgomery County Voter, approached the podium and
233 expressed concerns regarding the recent performance of over Randy Wertz, Montgomery
234 County General Registrar's in carrying out his assigned duties. Ms. Carter provided
235 several incidents that she said were cause for concerns during the recent elections. Ms.
236 Carter stated that as a voter in Virginia she is concerned that the results of the election are
237 distorted due to the mishandling of ballots and the general election laws. Ms. Carter
238 stated that Mr. Wertz and the Montgomery County Electoral Board are incompetent.
239 Secretary Palmer suggested that SBE Staff Members would meet to ascertain the issues
240 and to develop a training protocol. Secretary Palmer stated that he did not see any
241 evidence of fraud or election tampering. Ms. Carter appealed to the Board to vote on
242 additional sanctions. Vice-Chair Bowers stated that we did vote on this issue in the past.
243 Vice-Chair further stated that the appropriate actions have been taken and have been
244 heard by all current SBE Board Members. Chair Judd expressed his gratitude to Ms.
245 Carter for taking the time to attend the Board Meeting to share her concerns. Chairman
246 Judd stated that he wanted to thank the gentlemen from Botetourt County and assured
247 them that everything that was said will be taken under advisement and placed in the
248 hands of the proper authorities.

249 Chairman Judd then asked if there was any business to come before the Board for
250 the Good of the Order. Joshua Lief informed the Board Members that there was a lawsuit
251 in connection with a House of Delegates race, *Osborne vs. Palmer*, and that that the suit
252 has been filed is in the public record. Mr. Lief stated that the Attorney General's Office
253 was preparing a response and filing the papers today saying that the case is mute.
254 Chairman Judd announced that they would begin signing the Certificates of Elections.

255 Chairman Judd then asked if there was any business to come before the Board for
256 the Good of the Order and with there being none Secretary Palmer then made a motion to
257 adjourn. Chairman Judd seconded the motion and the Board unanimously approved the
258 motion. The Board shall reconvene on December 28, 2011 at 10:00AM. Chairman Judd
259 asked for any further public comment. There being none, the meeting was adjourned at
260 approximately 12:45PM.

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280 Secretary

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Chair

Vice-Chair

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